

MANDATE

04-211006
J. TARD
USOC-MABO

**United States Court of Appeals
For the First Circuit**

FILED
DISTRICT OF MASS.
2006 OCT 11 P 10:53

No. 05-2099

ANTHONY LEO,

Petitioner, Appellant,

v.

COMMONWEALTH OF MASSACHUSETTS,

Respondent, Appellee.

Before

Torruella, Selya and Howard,
Circuit Judges.

JUDGMENT

Entered: September 15, 2006

Essentially for the reasons given by the Magistrate Judge, in her report and recommendation, dated April 29, 2005, the request for a certificate of appealability is denied. We note only the following.


Petitioner's claim that the length of his pretrial confinement violates his right to due process, although presented in his December 2004 motion to the state superior court, was not appealed and, thus, was procedurally defaulted. Lattimore v. Dubois, 311 F.3d 46, 55 (1st Cir. 2002). Since petitioner has not shown either a cause for his failure to appeal or a miscarriage of justice, the claim was properly dismissed. See Burks v. Dubois, 55 F.3d 712, 716-17 (1st Cir. 1995).

The request for a certificate of appealability is denied and the appeal is terminated.

2006 OCT 10 P 12:04
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US COURT OF APPEALS
FOR THE FIRST CIRCUIT

**Certified and issued as Mandate
under Fed. R. App. P 41.**

Richard Cushing Donovan, Clerk


Deputy Clerk

Date: 10/10/06

By the Court:

Richard Cushing Donovan, Clerk.

By: **MARGARET CARTER**
Chief Deputy Clerk.

[cc: Anthony Leo and Maura D. McLaughlin, AAG]